

**Neaton Auto Products Manufacturing, Inc. and  
Robert E. Parker.** Case 9–CA–37579

September 30, 2004

NOTICE OF PUBLICATION

On September 14, 2004, the attached inadvertently issued as an unpublished Supplemental Order. The Board had decided to publish the previously issued Supplemental Order in the bound volumes of its decisions.

SUPPLEMENTAL ORDER

September 14, 2004

BY CHAIRMAN BATTISTA AND MEMBERS LIEBMAN AND  
MEISBURG

Counsel for the General Counsel's Motion to Remand Case to the Regional Director is granted. That motion is unopposed by any party.<sup>1</sup> Accordingly, this matter is remanded to the Regional Director for Region 9 for further appropriate action consistent with the Board's decision in *IBM Corp.*, 341 NLRB 1288 (2004).<sup>2</sup>

MEMBER LIEBMAN, dissenting.

This case is governed by the Board's recent decision in *IBM Corp.*, 341 NLRB 1288 (2004), in which Member Walsh and I dissented. It is ripe for decision. But rather than applying *IBM* to dismiss the complaint on the merits—a simple matter—my colleagues grant the General Counsel's motion to remand the case to permit his own dismissal of the complaint.

That step threatens to foreclose the Charging Party from seeking judicial review on the merits and thus from challenging the correctness of the *IBM* decision. While

the Charging Party cannot generally seek review of the General Counsel's decision to withdraw a complaint,<sup>1</sup> the Charging Party *can* seek judicial review of an adverse Board decision, even if he did not participate in the case before the Board.<sup>2</sup>

I do not accuse my colleagues of trying to insulate *IBM* from judicial review. But their failure to decide this case on the merits is puzzling. Even if it is not clear whether the Charging Party would seek judicial review, we should not create obstacles to his doing so.<sup>3</sup> Of course, the Board's decision today would itself seem to be a reviewable order. But challenging that decision as a means of seeking review of *IBM* is an unnecessarily circuitous route to require the Charging Party to take. Accordingly, I dissent.

<sup>1</sup> *NLRB v. Dood & Commercial Workers Local 23*, 484 U.S. 112 (1987).

<sup>2</sup> The Charging Party would be able to seek judicial review under Sec. 10(f) of the Act, as a "person aggrieved by a final order of the Board." See *Auto Workers Local 283 v. Scofield*, 382 U.S. 205, 210 (1965). On review, the Charging Party would be entitled to make any argument that had been presented to the Board by the General Counsel. See, e.g., *Hospital & Service Employees Local 399 v. NLRB*, 798 F.2d 1245, 1248 (9th Cir. 1986). See also *Postal Workers Union v. NLRB*, 370 F.3d 25, 27–28 (D.C. Cir. 2004).

<sup>3</sup> The Charging Party's failure to oppose the General Counsel's motion to remand makes no difference. The General Counsel has represented the interests of the Charging Party to this point. I would not expect a pro se Charging Party—who has essentially just lost his lawyer—to grasp the significance of recent events in this case and to quickly mount an effective response.

<sup>1</sup> Even if the Charging Party did not "grasp the significance" of the General Counsel's motion, we would expect that, at the very least, he would inquire of "his lawyer" [counsel for the General Counsel] as to what the motion meant.

<sup>2</sup> Our colleague says that, if there were a Board decision on the merits, the Charging Party could seek judicial review. We are less certain of this premise. The Charging Party did not make any arguments to the Board, and the General Counsel's final position before the Board is that there is no violation. In these circumstances, it is at least questionable whether the Charging Party would be free to argue to a circuit court that there *is* a violation, for Sec. 10(e) and (f) provide that arguments that are not made to the Board cannot be made to the court. However, we need not decide that issue. For, even if the Charging Party could do so, we would grant the General Counsel's *unopposed* motion.